

1 EDMUND G. BROWN JR.
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 KIM M. SETTLES
Deputy Attorney General
4 State Bar No. 116945
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2138
Facsimile: (510) 622-2270
7 E-mail: kim.settles@doj.ca.gov
Attorneys for Complainant
8
9
10

11 **BEFORE THE**
12 **BOARD OF REGISTERED NURSING**
13 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

14 In the Matter of the First Amended Accusation
15 Against:

16 **MICHELLE ANNETTE LEWIS**
17 **70 Palm Way**
Mill Valley, CA 94941
18 **Registered Nurse License No. 428958**
Public Health Nurse Certificate No. 47238

19 Respondent.

Case No. 2011-515

OAH No. 2011020173

FIRST AMENDED ACCUSATION

20
21 Complainant alleges:

22 **PARTIES**

- 23 1. Louise R. Bailey, M.Ed., R.N. (Complainant) brings this First Amended Accusation
24 solely in her official capacity as the Executive Officer of the Board of Registered Nursing.
25 2. On or about August 31, 1988, the Board of Registered Nursing issued Registered
26 Nurse License Number 428958 to Michelle Annette Lewis (Respondent). The Registered Nurse
27 License was in full force and effect at all times relevant to the charges brought in this First
28 Amended Accusation and will expire on January 31, 2012, unless renewed.

3. On or about February 28, 1991, the Board of Registered Nursing issued Public Health Nurse Certificate Number 47238 to Michelle Annette Lewis (Respondent). The Public Health Nurse Certificate was in full force and effect at all times relevant to the charges brought in this First Amended Accusation and will expire on January 31, 2012, unless renewed.

JURISDICTION

4. This First Amended Accusation is brought before the Board of Registered Nursing, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

7. Section 118, subdivision (b), of the Code provides that the expiration of a license does not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued, or reinstated.

STATUTORY PROVISIONS

8. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

• • •

11

//

1 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
2 functions, and duties of a registered nurse, in which event the record of the conviction shall be
3 conclusive evidence thereof.

4 9. Section 2762 of the Code states:

5 "In addition to other acts constituting unprofessional conduct within the meaning of this
6 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
7 chapter to do any of the following:

8 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
9 physician and surgeon, dentist, or podiatrist, administer to himself or herself, or furnish or
10 administer to another, any controlled substance as defined in Division 10 (commencing with
11 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as
12 defined in Section 4022.

13 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
14 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
15 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
16 himself or herself, any other person, or the public or to the extent that such use impairs his or her
17 ability to conduct with safety to the public the practice authorized by his or her license.

18 "(c) Be convicted of a criminal offense involving the consumption of any of the substances
19 described in subdivisions (a) and (b) of this section, in which event the record of the conviction is
20 conclusive evidence thereof."

21 10. Section 2770.11 of the Code states:

22 "(a) Each registered nurse who requests participation in a diversion program shall agree
23 to cooperate with the rehabilitation program designed by the committee and approved by the
24 program manager. Any failure to comply with the provisions of rehabilitation program may
25 result in termination of the registered nurse's participation in a program. The name and license
26 number of a registered nurse who is terminated for any reason, other than successful completion,
27 shall be reported to the board's enforcement program.

28 //

1 "(b) If the program manager determines that a registered nurse, who is denied admission
2 into the program or terminated from the program, presents a threat to the public or his or her own
3 health and safety, the program manager shall report the name and license number, along with a
4 copy of all diversion records for that registered nurse, to the board's enforcement program. The
5 board may use any of the records it receives under this subdivision in any disciplinary
6 proceeding."

7 **COST RECOVERY**

8 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licensee found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case.

12 **DRUGS**

13 12. Triazolam (brand name Halcion) is used to treat insomnia. It is a Schedule IV
14 controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(3), and a
15 dangerous drug pursuant to Business and Professions Code section 4022.

16 13. Ambien is a sedative-hypnotic (sleep medicine). It is a Schedule IV controlled
17 substance pursuant to Health and Safety Code section 11057 and a dangerous drug pursuant to
18 Business and Professions Code section 4022.

19 14. Lunesta is a sedative-hypnotic (sleep medicine). It is a Schedule IV controlled
20 substance pursuant to Health and Safety Code section 11057 and a dangerous drug pursuant to
21 Business and Professions Code section 4022.

22 15. Rozerem is used to treat insomnia. It is a dangerous drug pursuant to Business and
23 Professions Code section 4022.

24 16. Hydrocodone is used to relieve moderate to severe pain. It is a Schedule III
25 controlled substance pursuant to Health and Safety Code section 11056, subdivision (e)(4), and a
26 dangerous drug pursuant to Business and Professions Code section 4022.

27 //

28 //

17. Temazepam (brand name Restoril) is used to treat anxiety and insomnia. It is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057 and a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Controlled Substances)

18. Respondent has subjected her license to disciplinary action under section 2761, subdivision (a), on the grounds of unprofessional conduct as defined in section 2762, subdivisions (a) and (b), by obtaining and possessing controlled substances and dangerous drugs. The circumstances are as follows:

A. While employed as a registered nurse at Advanced Laser Clinics, in Corte Madera, California, Respondent, without authorization and in violation of the law, forged prescriptions and refills for herself using the name of the nurse practitioner who worked at the clinic and the physician's Drug Enforcement Agency number.

<u>DATE</u>	<u>DRUG</u>	<u>QUANTITY</u>	<u>PHARMACY</u>
05/08/07	Triazolam	40	Rite Aid #5961
04/06/07	Ambien	30	Walgreens #4559
04/06/07	Ambien	30	Walgreens #4559
03/19/07	Ambien	30	Walgreens #4559
01/20/07	Triazolam	100	Rite Aid #5961
01/19/07	Lunesta	30	Walgreens #4559
01/15/07	Ambien	30	Walgreens #4559
01/15/07	Rozerem	30	Walgreens #4559
12/23/06	Trazadone	35	Walgreens #4559
12/18/06	Ambien	30	Walgreens #4559
12/06/06	Hydrocodone	30	Walgreens #4559
12/06/06	Triazolam	100	Walgreens #4559
11/25/06	Hydrocodone	30	Walgreens #4559
11/03/06	Triazolam	100	Walgreens #4559

1	10/03/06	Triazolam	100	Walgreens #4559
2	09/12/06	Triazolam	100	Walgreens #4559
3	07/31/06	Triazolam	100	Walgreens #4559
4	07/21/06	Lunesta	60	Walgreens #4559
5	06/26/06	Lunesta	60	Walgreens #4559

B. While employed as a registered nurse at Plastic Surgery Specialists, in Greenbrae, California, Respondent, without authorization and in violation of the law, forged prescriptions for herself using her employer's name and Drug Enforcement Agency number.

	<u>DATE</u>	<u>DRUG</u>	<u>QUANTITY</u>	<u>PHARMACY</u>
10	03/05/08	Alprazolam	30	Costco
11	03/05/08	Lunesta	30	Costco
12	04/09/08	Lunesta	30	Costco
13	04/09/08	Alprazolam	30	Costco
14	04/28/08	Alprazolam	30	Costco
15	05/08/08	Alprazolam	30	Costco
16	06/17/08	Lunesta	30	Costco
17	07/15/08	Lunesta	30	Costco

SECOND CAUSE FOR DISCIPLINE

(Conviction of a Crime)

19. Respondent has subjected her license to disciplinary action under sections 2761, subdivision (f), and 490 in that on or about July 15, 2003, she was convicted on her plea of guilty of violation of Penal Code section 415 (public intoxication) in Marin County Superior Court, Case No. CR129466A, entitled *People v. Michelle Annette Lewis*. The circumstances of the crime are that on or about April 18, 2003, Respondent was in a public place under the influence of intoxicating liquor and a drug and in such a condition that she was unable to exercise care for her own safety and the safety of others.

//

//

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

3
4
5

6

7
8
9

10
1112
1314
15
16

17

18

19

20

21

22
23
24
25
26
27
28